

**U.S. Department of Labor**

Office of Administrative Law Judges  
800 K Street, NW, Suite 400-N  
Washington, DC 20001-8002

(202) 693-7300  
(202) 693-7365 (FAX)



**Issue Date: 07 June 2004**

***In the Matter of:***

GEORGE W. CHRISTIAN,  
Claimant,

v.

VIRGINIA CREWS COAL COMPANY,  
Employer,

and

DIRECTOR, OFFICE OF WORKERS'  
COMPENSATION PROGRAMS,  
Party-In-Interest

Case No: 2003 BLA 6243

***Appearances:***

Frederick K. Muth, Esquire  
For the Claimant

Robert Weinberger, Esquire  
For the Employer

Before: EDWARD TERHUNE MILLER  
Administrative Law Judge

**DECISION AND ORDER – AWARDING BENEFITS**

Statement of the Case

This proceeding involves a subsequent claim for benefits under the Black Lung Benefits Act, as amended, 30 U.S.C. 901 *et seq.* ("the Act") and the regulations promulgated thereunder.<sup>1</sup> Since Claimant filed this application for benefits after January 1, 1982, Part 718 applies. §718.2. Because the Claimant was last employed in coal mine work in the state of West Virginia, the law of the United States Court of Appeals for the Fourth Circuit controls. *See Shupe v. Director, OWCP*, 12 B.L.R. 1-200, 1-202 (1989) (*en banc*).

---

<sup>1</sup> The Department of Labor's amendment of the regulations implementing the Federal Coal Mine Health and Safety Act of 1969 became effective on January 19, 2001, and was published at 65 Fed. Reg. 80,045-80, 107 (2000)(codified at 20 C.F.R. Parts 718, 722, 725, and 726 (2003)). Citations to the regulations, unless otherwise indicated, refer to the amended regulations. The Director's exhibits are denoted "D-"; Claimant's exhibits, "C-"; and citations to the transcript of the hearing, "Tr."

George W. Christian (the “Claimant”) filed his initial claim for benefits under the Act on September 30, 1992. (D-1) The District Director denied benefits on February 8, 1993, because Claimant had not proved that he had pneumoconiosis, that the pneumoconiosis was caused by coal mine work, or that he was totally disabled by pneumoconiosis. (D-1) Claimant took no further action, and the claim became final and was administratively closed.

Claimant filed a subsequent claim for benefits May 28, 2002. (D-3) In a Proposed Decision and Order dated April 4, 2003, the Director denied benefits to Claimant. (D-29) In a letter dated April 8, 2003, Claimant requested a hearing before an administrative law judge. (D-30) A hearing took place before this tribunal on December 16, 2003, in Princeton, West Virginia.<sup>2</sup>

### Issues

1. Whether, under §725.309(d), Claimant has shown that one of the applicable conditions of entitlement previously decided against him has changed since the previous denial of benefits on February 8, 1993, by establishing that he has pneumoconiosis, that it was caused by coal mine employment, that he is totally disabled by a respiratory or pulmonary impairment, or that he is totally disabled by pneumoconiosis?
2. If so, whether Claimant has established the elements of entitlement to benefits under Part 718?

### FINDINGS OF FACT

#### Background

Claimant was born on February 22, 1939, and completed the ninth grade of education. (D-3) Claimant alleged that he completed nineteen years of coal mine employment, ending in October, 1990, which is supported by his Social Security record, and is not contested by Virginia Crews Coal Company (the “Employer”). (D-4, 5, 34) Claimant last worked in the coal mining industry for Employer as an electrician. (D-4) Claimant married Carol Sue Christian August 3, 1965. (D-8) They were currently married and living together at the time of the hearing. (D-4, Tr. 12) Claimant claimed that his wife was his only dependent and Employer did not rebut that claim. (Tr. 12)

Claimant claimed that he smoked cigarettes for half a year to one year at the age of fourteen. (Tr. 20) Dr. Zaldivar recorded that Claimant smoked for two to three years at the age of twelve. (D-10) Dr. Robinette recorded a less than two pack years smoking history. (D-12) Dr. Forehand recorded that Claimant smoked for four to five years around the age of seventeen. (D-13) Dr. Vasudevan recorded a forty-eight year smoking history starting in 1944. (D-1) Apparently, Dr. Vasudevan incorrectly recorded Claimant’s smoking history, because as he recorded it, Claimant would have started smoking at the age of five. It is apparent that Claimant

---

<sup>2</sup> Director’s exhibits one through thirty-six were admitted into evidence at the hearing. (Tr. 6, 7) Claimant’s request for additional time to submit two exhibits was granted at the hearing. (Tr. 8-10) Claimant timely submitted Claimant’s exhibits one and two subsequent to the hearing, and they have been admitted into the record.

had a very short smoking history that occurred during his teenage years. This tribunal adopts a smoking history of two years around the age of fourteen

Medical Evidence Developed Subsequent to the Closing  
of the Record on Which the Prior Denial was Based

X-Rays<sup>3</sup>

<b>Exhibit No.</b>	<b>X-ray Date</b>	<b>Physician</b>	<b>Qualifications</b>	<b>Film Quality</b>	<b>Interpretation</b>
D-11	7/24/02	Wiot	R/B	2	0/0
D-18	7/24/02	Forehand <sup>4</sup>	B	1	0/0
D-19	7/24/02	Binns	R/B	2	Film was not read for pneumoconiosis
D-10	12/4/02	Zaldivar	B	1	0/0
D-12	1/31/03	Robinette	B	2	1/1, p/q
C-2	1/31/03	Cappiello	R/B	2	1/0, p/p

Pulmonary Function Studies<sup>5</sup>

<b>Exh. No</b>	<b>Test Date</b>	<b>Age/ Ht</b>	<b>Doctor</b>	<b>Co-op./ Undst./ Conf.?</b>	<b>FEV1</b>	<b>FVC</b>	<b>MVV</b>	<b>Qualify</b>
D-15	7/24/02	63/ 66"	Forehand	Good/	1.83	2.94	75	No
				Good/	2.01	3.08	97	No
				Yes				
D-10	12/4/02	63/ 66"	Zaldivar	Not Noted/	1.92	3.53	-	No
				Not Noted/	2.05	3.80	-	No
				No				

<sup>3</sup> The following abbreviations are used in describing the qualifications of the physicians: B-reader, "B"; board-certified radiologist, "R". An interpretation of "0/0" signifies that the film was read as completely negative for pneumoconiosis.

<sup>4</sup> This tribunal has taken judicial notice of Dr. Forehand's qualifications by reference to the worldwide web, American Board of Medical Specialties, Who's Certified Results, at <http://www.abms.org>, and the List of NIOSH Approved B Readers, found, *inter alia*, at <http://www.oalj.dol.gov/libbla.htm>. See *Maddaleni v. Pittsburgh & Midway Coal Mining Co.*, 14 B.L.R. 1-135 (1990)

<sup>5</sup> The second set of values indicates post-bronchodilator studies.

Exh. No	Test Date	Age/ Ht	Doctor	Co-op./ Undst./ Conf.?	FEV1	FVC	MVV	Qualify
D-12	1/31/03	63/ 65"	Robinette	Not Noted/	1.94	3.12	-	No
				Not Noted/	2.02	3.17	-	No
				No				

#### Arterial Blood Gas Studies<sup>6</sup>

Exh. No.	Test Date	Physician	Conform?	pCO2	pO2	Qualifying
D-14	7/24/02	Forehand	Yes	30	57	Yes
				32	59	Yes <sup>7</sup>
D-10	12/4/02	Zaldivar	Yes	33	64	Yes
				35	61	Yes <sup>8</sup>
D-12	1/31/03	Robinette	Yes	31	64	Yes

#### Medical Reports and Opinions

##### *Dr. George L. Zaldivar*

In connection with a medical report dated December 4, 2002, Dr. Zaldivar, a B-reader who is board-certified in internal medicine and the subspecialty of pulmonary disease, examined Claimant. Dr. Zaldivar noted that Claimant smoked for two to three years when he was twelve years of age, but that he has not smoked since that time. Dr. Zaldivar opined that Claimant's normal carbon monoxide level was consistent with Claimant's claim that he was not smoking at the time of the examination. Dr. Zaldivar noted that Claimant worked in the coal mines for nineteen and a half years as an electrician performing heavy manual labor, stopping in 1990. Dr. Zaldivar declared that Claimant's lungs were "clear to auscultation," and were without wheezes, crackles, or rales. Dr. Zaldivar opined that there was no radiographic evidence of pneumoconiosis. However, there was radiographic evidence of bullae. Dr. Zaldivar opined that there was a moderate irreversible airway obstruction demonstrated by the spirometry, and that there was air trapping by lung volumes, with normal total lung capacity. Dr. Zaldivar declared that Claimant had a moderate diffusion impairment, and an abnormal exercise test compatible with a moderate pulmonary impairment and due to ventilation and perfusion mismatch caused by emphysema. Dr. Zaldivar opined that Claimant's pulmonary impairment would prevent him

<sup>6</sup> The second set of values indicates that an exercise test was performed.

<sup>7</sup> Dr. Gaziano, a B-reader who is board-certified in internal medicine and the subspecialty of pulmonary disease, opined that the test was technically acceptable. (D-16, 17)

<sup>8</sup> Dr. Zaldivar noted that the exercise portion of the examination was stopped due to shortness of breath and dizziness.

from performing his usual coal mining work or work requiring similar exertion. Dr. Zaldivar opined that Claimant's pulmonary impairment was caused by bullous emphysema, most commonly related to a significant smoking habit, which Claimant claimed was nonexistent, and that the bullae were not caused by Claimant's coal mine employment. Dr. Zaldivar concluded that even if Claimant were found to have coal worker's pneumoconiosis (CWP), his opinion regarding the cause of the pulmonary impairment, would remain the same. (D-10)

*Dr. Emory Robinette*

In connection with a medical report dated February 18, 2003, Dr. Robinette, a B-reader who is board-certified in internal medicine and the subspecialty of pulmonary disease, examined Claimant. Dr. Robinette noted that Claimant worked as a coal miner for nineteen years, until October, 1990, predominantly as an electrician and equipment operator. There was no history of asbestos or radiation exposure. Dr. Robinette noted that there was no history of cigarette consumption in the past of any substantial nature, with less than two pack years total. Claimant's chest on auscultation revealed bilateral inspiratory crackles present in both lung fields, predominantly affecting the mid and lower lung zones. Dr. Robinette opined that a specified chest x-ray showed evidence of mild interstitial pulmonary fibrosis, which was greatest in the mid and lower lung zones, but no large opacities were noted. There was evidence of, *inter alia*, emphysema. Based on a review of a pulmonary function study and arterial blood gas study, Dr. Robinette opined that there was mild obstructive lung disease with evidence of moderate air trapping. Dr. Robinette also opined that there was moderate reduction of the diffusion capacity and evidence of intercurrent hypoxemia. Dr. Robinette diagnosed Claimant with, *inter alia*, simple CWP and obstructive lung disease. Dr. Robinette opined that there was evidence of a significant functional impairment, which, along with his reduction of diffusion capacity and airflow, precluded Claimant from working. (D-12)

In a deposition dated January 6, 2004, Dr. Robinette opined that Claimant had CWP based on his occupational history and his radiographic abnormalities. Dr. Robinette declared that Claimant had sufficient dust exposure to cause CWP, and that inspiratory crackles, which are associated with pulmonary fibrosis, were suggestive of occupational lung disease. Dr. Robinette opined that he was able to attribute Claimant's abnormal pulmonary function study results, his reduction in diffusion capacity, and his airflow obstruction to his exposure to coal mine dust, because Claimant had a very short history of smoking cigarettes. Dr. Robinette declared that the pulmonary function studies indicated that Claimant suffered from a significant degree of obstructive lung disease, which is sometimes present in patients with simple pneumoconiosis, due to the development of focal emphysema from coal dust deposition. Dr. Robinette opined that Claimant's x-ray showed, in addition to opacities associated with CWP, evidence of emphysema fragments, which is common in patients with coal dust inhalation. Dr. Robinette declared that the x-ray did not show any evidence of large bullae in Claimant's lungs, only emphysema or hyperinflation. Dr. Robinette stated that he usually associates large bullae, or blebs on the lungs, with other disease processes, such as emphysema acquired from smoking or emphysema acquired from a familial lung disease that may be associated with the disorder. Dr. Robinette concluded that Claimant's disabling lung disease was the result of his coal mine dust exposure. Dr. Robinette opined that if he took Claimant's x-ray out of the "history" and documented that Claimant was a nonsmoker, and if he could not explain Claimant's pulmonary

disease based either on some other exposure or family history of asthma or emphysema, he would have to conclude that Claimant had an occupational pulmonary disorder as the primary cause of the impairment. Dr. Robinette opined that Claimant had arthritis, but it would not cause his pulmonary condition, and that, while his arthritis and back injury would prohibit Claimant from working in a cramped coal mining position operating equipment, his lung disease would contribute to his inability to work. Dr. Robinette declared that although Claimant's pulmonary function studies did not qualify for disability under the rules of the Department of Labor, the airflow obstruction with evidence of reduction in diffusion capacity and hypoxemia, combined to show that Claimant was disabled, which is supported by Claimant's exercise portion of his arterial blood gas study. (C-1)

*Dr. J. R. Forehand*

In connection with a medical report dated July 25, 2002, Dr. Forehand, a B-reader who is board-certified in allergy and immunology, examined Claimant. Dr. Forehand noted that Claimant had worked in the coal mines for nineteen years, until 1990, and had last worked as an electrician. Dr. Forehand noted that Claimant smoked for four to five years, around the age of seventeen, but that Claimant has not smoked since then. Dr. Forehand opined that Claimant's breath sounds were normal with normal distribution. Dr. Forehand opined that an unspecified x-ray dated July 24, 2002, was clear. Dr. Forehand declared that Claimant's pulmonary function and arterial blood gas studies showed an obstructive ventilatory pattern and hypoxemia. Dr. Forehand diagnosed Claimant with chronic bronchitis, but opined that there was no evidence of CWP. Dr. Forehand opined that the cause of Claimant's chronic bronchitis was airway hyperactivity and "? cigarette smoking." Dr. Forehand opined that a respiratory impairment was present, which caused insufficient "residual oxygen transfer capacity remains" to continue in his last coal mining job. Dr. Forehand concluded that Claimant was totally and permanently disabled and that the disability was caused solely by chronic bronchitis. (D-13)

Conclusions of Law and Discussion

Subsequent Claim

Benefits under the Act are awardable to persons who are totally disabled due to pneumoconiosis within the meaning of the Act. For the purpose of the Act, pneumoconiosis, commonly known as black lung, means a chronic dust disease of the lung, and its sequelae, including respiratory and pulmonary impairments arising out of coal mine employment. A disease arising out of coal mine employment includes any chronic pulmonary disease resulting in respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment. §718.201. In order to obtain federal black lung benefits, a claimant must prove by a preponderance of the evidence that: (1) he has pneumoconiosis; (2) the pneumoconiosis arose out of his coal mine employment; (3) he has a totally disabling respiratory or pulmonary impairment; and (4) pneumoconiosis contributed to the total disability. 20 C.F.R. §725.202(d)(2)(2001); §718.204.

### Material Change in Conditions or Change in Applicable Conditions of Entitlement

Since the instant claim was filed more than one year after the denial of Claimant's previous claim, it is considered a subsequent claim under the Act. §725.309(d). Under the amended regulations, a subsequent claim shall be denied on the grounds of the prior denial unless the claimant demonstrates that one of the applicable conditions of entitlement has changed since the date upon which the order denying the prior claim became final. §725.309(d). In essence, the amended regulations codified the holding of the Fourth Circuit in *Lisa Lee Mines* that, to establish a material change in conditions, a claimant must prove at least one of the elements previously adjudicated against him, based on newly submitted probative medical evidence of his condition not available at the time of the prior claim. *Lisa Lee Mines v. Director, OWCP*, 86 F.3d 1358, 20 B.L.R. 2-227 (4th Cir. 1996)(*en banc*). In the instant claim, the previous denial was based on the finding that Claimant had not established that he had pneumoconiosis, that it was caused by coal mining, that he was totally disabled by a pulmonary or respiratory impairment, or that the disability was caused by pneumoconiosis. Therefore, in order to establish entitlement, Claimant must establish that one of these conditions has changed since the date of the denial of the prior claim.

### Total Disability

The Employer stipulated to Claimant being totally disabled by a pulmonary or respiratory impairment. (Tr. 7-8) A stipulation is binding regardless of the underlying evidence. *Richardson v. Director, OWCP*, 94 F.3d 164 (4th Cir. 1996). Therefore, Claimant proved that he was totally disabled by a pulmonary or respiratory impairment, and has proved a change in conditions.

### Review of All Evidence

Because the Employer stipulated that the Claimant is totally disabled by a respiratory or pulmonary impairment, Claimant has established a material change in conditions or change in one of the applicable conditions of entitlement. When a claimant demonstrates a material change in conditions or change in one of the applicable conditions of entitlement, no findings made in connection with the prior claim, except those based on a party's failure to contest an issue, shall be binding on any party in the adjudication of the subsequent claim. §725.309(d)(4). Therefore, the subsequent claim is considered a new and viable claim to be reviewed *de novo* and Claimant must prove four elements to receive benefits: (1) the existence of pneumoconiosis; (2) the pneumoconiosis arose out of his coal mine employment; (3) a totally disabling respiratory or pulmonary condition; and (4) pneumoconiosis is a contributing cause to his total respiratory disability.

### Existence of Pneumoconiosis

The definition of pneumoconiosis includes both medical, or "clinical," pneumoconiosis and statutory, or "legal," pneumoconiosis. See §718.201. Section 718.202(a) prescribes four bases for finding the existence of pneumoconiosis: (1) a properly conducted and reported chest x-ray; (2) a properly conducted and reported biopsy or autopsy; (3) reliance upon certain

presumptions which are set forth in §§718.304, 718.305, and 718.306; or (4) the finding by a physician of pneumoconiosis as defined in §718.201 which is based upon objective evidence and a reasoned medical opinion. Since there is no evidence that Claimant suffers from complicated pneumoconiosis, the presumption set forth in §718.304 is inapplicable. Since the claim was filed after January 1, 1982, and since this is not a survivor's claim, the presumptions set forth in §§718.305 and 718.306 are inapplicable as well. No biopsy has been performed of record on Claimant.

The existence of pneumoconiosis requires consideration of "all relevant evidence" under §718.202(a), as specified in the Act. Thus, if a record contains relevant x-ray interpretations, biopsy reports, and physicians' opinions, the Act would prohibit a determination based on x-ray alone, or without evaluation of physicians' opinions that the miner suffered from "legal," as opposed to traditionally clinical, pneumoconiosis. See *Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 B.L.R. 2-104 (3d Cir. 1997); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 B.L.R. 2-162 (4th Cir. 2000).

The record contains seven interpretations of four chest x-rays.<sup>9</sup> Two of the readings were positive for pneumoconiosis, and five were negative. Two negative readings and one positive reading were made by dually qualified board-certified radiologists and B-readers. Three negative readings and one positive reading were performed by B-readers. Three of the x-rays were read exclusively as negative for pneumoconiosis, and one was read exclusively as positive for pneumoconiosis. While the most recent x-ray was read as positive for pneumoconiosis, it was read only two months later than the December 4, 2002, x-ray and six months later than the July 24, 2002, x-ray, so that the most recent evidence rule does not apply. Of the most recent x-rays, one was read as positive by a dually qualified physician, and one was read as negative by a dually qualified physician. Because the x-ray evidence is in virtual equipoise, this tribunal has reviewed physicians' comments to determine the existence of pneumoconiosis. Dr. Zaldivar noted bullae in Claimant's lungs, but did not note them in the x-ray as any type of pneumoconiosis. Dr. Wiot noted disc atelectasis at both lung bases. Because two of the most recent x-ray readings were positive for pneumoconiosis, and because the comments of two physicians reading the x-rays as negative for pneumoconiosis do not contradict the finding of opacities in Claimant's lungs, Claimant has proved by the preponderance of the x-ray evidence that he has pneumoconiosis under §718.202(a)(1).

In a well reasoned medical opinion that was supported by specified medical evidence, Dr. Robinette opined that Claimant had pneumoconiosis, based upon an examination of Claimant. Dr. Robinette opined that even if there was no evidence of pneumoconiosis on x-ray, Claimant's emphysema was caused by coal mine dust. Dr. Zaldivar opined that Claimant had emphysema and bullae in his lungs, caused by a smoking history. However, Claimant had proved that he had a very short smoking history and his carbon monoxide level was consistent with his claim that he was not smoking at the time Dr. Zaldivar examined him, so that Dr. Zaldivar's opinion is not well reasoned and is not supported by the medical evidence of record. In addition, Dr. Zaldivar's report is very short without much explanation for his findings, so that his opinion is conclusory. Dr. Robinette and Dr. Zaldivar are both board-certified in internal medicine and the subspecialty of pulmonary disease. Dr. Forehand is not qualified in either specialty, so that his opinion is

---

<sup>9</sup> An additional x-ray was read by Dr. Binns for quality only.



given less weight than those of Dr. Zaldivar and Dr. Robinette. While Dr. Forehand opined that Claimant did not have pneumoconiosis, his report is very short as well, and there is no explanation of his findings, so that his opinion is conclusory. In addition, Dr. Forehand opined that Claimant had chronic bronchitis, but did not state any cause other than airway hyperactivity and “? cigarette smoking,” so that his opinion is vague and equivocal. Also, the opinions of Drs. Zaldivar and Forehand are contrary to this tribunal’s findings that the x-ray evidence supports a finding of pneumoconiosis, so that their opinions are given little weight. Therefore, because Dr. Robinette’s opinion is better reasoned and better supported by the medical data, Claimant has proved by a preponderance of the evidence that he has pneumoconiosis under §718.202(a)(4).

### Causation

In addition to establishing the existence of pneumoconiosis, a claimant must also establish that his pneumoconiosis arose, at least in part, out of his coal mine employment. Pursuant to §718.203(b), a claimant is entitled to a rebuttable presumption of a causal relationship between his pneumoconiosis and his coal mine employment if he worked for at least ten years as a coal miner. In the instant case, Claimant established at least nineteen years of coal mine employment. The only etiology that Employer has provided for Claimant’s pneumoconiosis is cigarette smoking, which Claimant proved was very short and that it was many years ago, and which Dr. Robinette opined was insignificant in amount. Therefore, Employer has not rebutted the presumption that Claimant’s pneumoconiosis was caused by his coal mine employment and Claimant is entitled to the unrebutted presumption that pneumoconiosis arose from his coal mine employment under the provisions of §718.203(b).

### Total Disability

Claimant has established that he is totally disabled due to a pulmonary or respiratory impairment by stipulation of the Employer, as discussed.

### Total Disability Due to Pneumoconiosis

To establish entitlement, a claimant must prove by a preponderance of the evidence that he is totally disabled due to pneumoconiosis. A miner is considered totally disabled due to pneumoconiosis if pneumoconiosis is a substantially contributing cause of the miner’s totally disabling respiratory or pulmonary impairment. §718.204(c)(1). Pneumoconiosis is a “substantially contributing cause” of the miner’s disability if it has a material adverse effect on the miner’s respiratory or pulmonary condition, or it materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment. *Id.* In a well reasoned and well documented report, Dr. Robinette explained that based on Claimant’s x-ray, arterial blood gas study, pulmonary function study, coal mine employment history, and very short smoking history, that Claimant was totally disabled by a respiratory disease caused by pneumoconiosis. Dr. Zaldivar and Dr. Forehand both opined that Claimant was totally disabled by a respiratory or pulmonary disease, but that it was not caused by pneumoconiosis. Dr. Zaldivar opined that Claimant’s impairment was caused by cigarette smoking, even though he acknowledged that there was clinical proof that Claimant was not smoking at the time of the examination, and Claimant proved that he had a very short smoking

history. Consequently, Dr. Zaldivar's opinion is not well reasoned. Dr. Forehand opined that Claimant's impairment was caused solely by chronic bronchitis, but only listed airway hyperactivity and "? cigarette smoking" as causes of the bronchitis, so that his opinion is equivocal. In addition, Dr. Forehand is not as qualified to diagnose pulmonary and respiratory diseases as Drs. Zaldivar and Robinette, so that his opinion is given less weight. Therefore, based on a preponderance of the medical opinions, Claimant has proved that he is totally impaired by pneumoconiosis under §718.204(c).

#### Attorney's Fees

Claimant's counsel may file an application for approval of an attorney's fee with this tribunal within thirty days of the date of this decision in accordance with §§725.365 and 725.366. A service sheet must accompany any fee application, showing that service of the application has been made upon all parties including Claimant. Objections to the application may be filed within twenty days following receipt of such a fee application. The Act prohibits charging any fee to the Claimant for representation in relation to prosecution of a black lung claim in the absence of prior approval in accordance with the applicable regulations.

#### Date of Onset

Section 725.503(b) of the act provides that benefits are payable to a miner who is entitled to payment of benefits beginning with the month of onset of total disability due to pneumoconiosis arising out of coal mine employment. Where the evidence does not establish the month of onset, benefits shall be payable to such miner from the month in which the claim was filed, and "[i]n any case in which a subsequent claim is awarded, no benefits may be paid for any period prior to the date upon which the order denying the prior claim became final." §§725.309(d)(5), 725.503(b) Dr. Robinette first opined that Claimant was disabled due to pneumoconiosis on February 18, 2003. There is no evidence of earlier onset. Therefore, February 18, 2003, is deemed to be the onset date which establishes entitlement to payment of benefits as of February 1, 2003.

### **ORDER**

The claim of George W. Christian for benefits under the Act is granted. Respondent Employer shall pay such benefits as the District Director calculates as due to Claimant commencing as of February 1, 2003.

**A**

EDWARD TERHUNE MILLER  
Administrative Law Judge

**NOTICE OF APPEAL RIGHTS:** Pursuant to 20 C.F.R. §725.481, any interested party dissatisfied with this Decision and Order may appeal it to the Benefits Review Board within thirty (30) days from the date of this Decision and Order by filing a notice of appeal with the **Benefits Review Board, P.O. Box 37601, Washington, D.C. 20013-7601**. A copy of the notice of appeal must also be served on Donald S. Shire, Esquire, Associate Solicitor, Room N-2117, 200 Constitution Avenue, N.W., Washington, D.C. 20210.